

## REMARKS

This Amendment is submitted simultaneously with filing of a Request for Continuing Examination and in response to the Office Action of July 16, 2009.

In the Office Action the claims were rejected as being anticipated by the U.S. patent to Izraelev.

After carefully considering the Examiner's grounds for rejection of the claims over the art, applicants amended Claim 9, the broadest claim on file, so as to more clearly define the present invention and to distinguish it from the prior art.

Claim 9, the broadest claim on file, defines a centrifugal pump with a housing, a pump rotor forming a rotor of drive motor and provided with at least one permanently magnetized region and upper and lower coverings. In accordance with the present invention, the rotor has an inlet at an intake side for entering the fluid into the rotor and an outlet for leaving the fluid so that the fluid flows through the rotor. In accordance with the present invention, also the blades of the rotor are arranged between the upper and lower coverings inside the rotor.

Turning now to the reference and in particular to the patent to Izraelev, it can be seen that the rotor disclosed in this reference does not have an inner through flow cross-section with an inlet and an outlet to provide a flow of blood inside the rotor through it from the inlet to the outlet. In the reference the blood flows only outside of the rotor along its walls.

While in the present invention the blades of the inventive rotor are located between the coverings, in the reference there are uncovered blades which have influence on the blood flow within the clearance between the rotor and the inner wall of the housing.

It is therefore believed to be clear that the new features of the present invention which are now defined in Claim 9 are not disclosed in the patent to Izraelev.

The original claims have been rejected over this reference as being anticipated. In connection with this, it is believed to be advisable to cite the decision In Re Lindenmann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir 1984) in which it was stated:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.”

Definitely, the reference does not disclose each and every element of the present invention as now defined in amended Claim 9.

It is therefore respectfully submitted that the anticipation rejection applied by the Examiner against the original claims should be considered as not tenable with respect to amended Claim 9 and should be withdrawn.

As explained hereinabove, the present invention provides for the highly advantageous results which cannot be accomplished by the device disclosed in the reference. It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushma and Takahashi* (174 UPSQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of the ordinary skill in the art to rewire prior art devices in order to accomplish applicant's result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

It should be also mentioned that the reference does not contain any hint or suggestion for the new features of the present invention which are now defined in amended Claim 9. In order to arrive at the present invention from the reference, the reference has to be fundamentally modified by including into it the above mentioned new features of the present invention which are not disclosed

in the references and which were first proposed by the applicant. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision *In Re Randol and Redford* (165 USPQ 586) that:

Prior patents are references only for what they clearly disclose or suggest, it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

In view of the above presented remarks and amendments, it is believed that Claim 9, the broadest claim on file, should be considered as patentably distinguishing over the art and should be allowed.


As for the dependent claims, these claims depend on Claim 9, they share its allowable features, and they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is

respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

  
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